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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/634,339	08/08/2000	Evan John Kaimowitz	3092/1G844-US1	4215

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Darby & Darby PC  
805 Third Avenue  
New York, NY 10022

EXAMINER

TRAN, QUOC A

ART UNIT	PAPER NUMBER
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2176

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/634,339

Applicant(s)

KAIMOWITZ, EVAN JOHN

Examiner

Quoc A. Tran

Art Unit

2176

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 September 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-24.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 5. does NOT place the application in condition for allowance because:

As for argument on pages 3-5, step 6(a) taught by '107 at page. 4, paragraph [0074], also at page 5, paragraph [0082] (i.e...the first clip</TITLE> <AUTHOR...); as for step 6(b) taught by '107 at page. 5, paragraph [0088], also at page 4, paragraph [0065] (i.e...playback MP3 content (e.g. Live feeds)...); as for step 6(c) taught by '107 at page. 4, paragraph [0078] through page. 5, paragraph [0080] (i.e.. media clips are available from media server 115. Media clips can be video, audio, graphics, or other data capable of being digitized and downloaded across a network... user selects to play a song or a list of songs, in step 325 ...the media server); as for step 6(e) taught by '107 at page. 1, paragraph [0006] (i.e. ... protocols and interfaces ...communication between ... user may navigate and select the particular media items to be played... information must also be communicated between the server and the player before the transmission of the actual media); as for claim 7 was taught by the combination of '107 and '900, as for the limitation, "wherein at least one predetermined criterion is that plural responses from other users", as taught by '130 at col. 3, lines 1-5, and As for argument on pages 5-8, step 1(a) through 1(e) were taught '130, in view of '686. As for step 1(a), was taught by '686 at col. 1, line 60 through col. 2, line 3, also at col. 2, lines 40-45 (i.e... the tune 12 is hummed by a person 18 into a microphone 20, and the hummed query, illustrated at 21, is suitably digitized, in accordance with principles commonly known to those of ordinary skill in the art to which this invention pertains, and the digitized signals of the hummed query 21 are fed to a pitch tracking module 22 in computer 16...); as for 1(b)-1(c), was taught by '130 at col. 3, lines 10-18, and by '130 at col. 3, lines 1-5; as for step 1(d)-1(e), was taught by '990 at col. 2, lines 28-30 (i.e.... Internet site functions as a forum where participants may post or submit content to the site). Examiner reads participants of internet site, which could interpreted as the claimed "to a human visitor to the server". As for claims 12, incorporate substantially similar subject matter as cited in independent claim 1, and "microphone of a telephone", as taught by '130, '990, '686; it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teaching of '990 and '686 that featured the method for inputting a melody/hummed to a computer and converted into a digital form, that will be matches with database of melodies/public domain MIDI songs and producing the related material into the communication that taught by '130. One of the ordinary skill in the art would have been motivated to modify this combination to offered opportunities for electronic commerce of massive proportions. whereby consumers can easily and quickly find and purchase individual tracks or entire albums that are deemed to be of relevance and interest, as taught by '130 at col. 1, lines 15-30 (i.e.... whereby consumers can easily and quickly find and purchase individual tracks or entire albums...). As for claim 21(a)-(d), incorporate substantially similar subject matter as cited in claim 1 above, and is similarly rejected along the same rationale...



**SANJIV SHAH**  
**PRIMARY EXAMINER**